FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 122 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. A.V. Anturkar i/by Mrs. Vanita V. Baker-Shastry for Petitioner.

Mr. A.H. Palekar, A.G.P. for Respondents.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 25, 2005

P.C.

. Rule. Heard forthwith.

. The Petitioner was granted mining licence for the periods of 1998-03. According to Petitioner he has paid royalty. The grievance of the Petitioner is that subsequent demands were made on the ground that the royalty amount has not been properly calculated. The Petitioner on receiving demand made out a case firstly that the measurement included surface rejects which was not a minor mineral and seeks exclusion of the rejects for the purpose of computing the royalty. It is

secondly contended that the royalty can be charged at the rates prevailing for the respective year for which it was chargeable and it cannot be charged on the basis of royalty prevailing at the time of demand. The demand it is pointed out does not disclose the basis of which the amounts have been calculated. It is then pointed out that in terms of the rules pertaining to minor minerals, if there be any dispute in the matter of the lease under Rule 37 and as included therein, that dispute must be referred by the competent Officer to the Government which decision shall be final and binding. In the instant case, it is submitted that instead of referring the dispute, respondent Nos. 2 and 3 have made demands. This, it is contended would be without jurisdiction considering Rule 37.

. Considering the arguments advanced and rule 37, as pointed out it will be clear that anything connected with demand for royalty, if there be any dispute, the same has to be decided by the State Government on reference being made by the Competent Officer. In the instant case, the dispute as raised is two fold. Firstly whether while computing the measurements, the surface reject has to be considered for the

purpose of calculating royalty and secondly whether the royalty should be calculated on the basis of extraction in the year of extraction or based on the demand made on the basis of royalty prevailing at the time of the demand.

. The demand pertains to extraction of sand illegally from the mining lease. There is some material to show that the Petitioner had agreed to the measurement. The issue of royalty for the year of extraction can be assumed if there were measurements done or reported by the Petitioners for the year for which they were not charged. If there be no such material produced by the Petitioners, it is for the Respondents based on the material available to pass appropriate order according to law.

. In the light of the above, the following order :

. Respondent No. 2 to refer the disputes as set out in the judgment to Respondent No. 1 for decision of Respondent No. 1. Respondent No. 1 to decide the dispute after an opportunity to the Petitioners at any rate within three months from today.

. In the meantime, respondents not to act on the demand.

. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)